

***United States Court of Appeals  
for the Second Circuit***



**BRIEF FOR  
APPELLANT**



**ORIGINAL 74 1370**

**United States Court of Appeals**

For the Second Circuit.

**MARIE AGUILAR,**

Appellant,

-against-

**UNITED STATES OF AMERICA,**

Appellee.

*On Appeal from the United States District  
Court for the Southern District of New York*

**Appellant's Brief**

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*[Handwritten signature]*

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**PRELIMINARY STATEMENT**

This is an appeal from a judgment of the United States District Court for the Southern District of New York rendered December 11, 1973, wherein, after a trial before Hon. Inzer B. Wyatt and a jury, appellant, Marie Aguilar was convicted of violating Sections 812 and 814A of Title 21, United States Code, conspiracy to violate federal narcotics laws and distribution or possession with intent to distribute narcotic drugs.\*

**STATEMENT OF FACTS**

The appellant, Marie Aguilar, was indicted jointly with, Candido Mayet, Jr., Harry Shapiro and Robert Kelly. Only the

\*This appeal will be heard on the original record.

appellant and Candido Mayet Jr., pleaded not guilty and were tried together. The defendant, Candido Mayet Jr., operated a shoe factory and a retail shoe store in the State of New Jersey, (TR-565) with his father. The appellant, Marie Aguilar, assisted Mr. Mayet in the operation of his shoe business (TR-584).

The chief witness for the prosecution against appellant, Marie Aguilar, was Harry Shapiro, an employee of Candido Mayet Jr. (TR-569).

Shapiro testified that he had an agreement with Mayet to obtain customers who wished to purchase cocaine. If a sale were made as the result of Shapiro providing the purchaser he would be rewarded with financial compensation (TR-184 and 185). Shapiro further testified that he brought Susan Marcus to Mayet's factory in New Jersey (TR200) and there he obtained cocaine for Susan Marcus through the efforts of Candido Mayet Jr. and Marie Aguilar (TR202).

Shapiro testified that on another occasion he witnessed Candido Mayet Jr., place a package containing cocaine into a handbag carried by Marie Aguilar while all three were in an automobile (TR216). There was no direct evidence that appellant, Marie Aguilar, engaged in the sale of cocaine or that she knowingly possessed same.



**POINT I****MATTERS NOT IN EVIDENCE WERE VIEWED BY JURY AND ALLUDED TO BY PROSECUTION DURING SUMMATION IN VIOLATION OF DUE PROCESS RIGHTS OF APPELLANT.**

A handbag and keys contained therein were received into evidence (TR447 and 448). Other items contained in the handbag, not received in evidence, were displayed to the jury and referred to during the course of the trial (TR259, 774, 775). The error in displaying items not in evidence and underlining their importance by discussion was undoubtedly inadvertent. Nevertheless, where the trier of the facts is exposed to and does consider matters not received in evidence its verdict must be deemed inherently lacking in due process. See *United States v. McMann*, 435, F.2d 813 (2nd Cir. 1970). *Estes v. Texas*, 381 U.S. 532 (1965). *United States v. Flohr*, 472 F.2d 1165.

**POINT II****THE COURT ERRED IN CHARGING THE INTENT OF CONGRESS IN ENACTING THE COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT.**

The Court in its charge (TR743) instructed the jury that the appellant was charged with two separate offenses under the Comprehensive Drug Abuse Prevention and Control Act. The Court then proceeded to deliver a personal opinion on the intent and purposes of Congress in enacting the subject legislation. Although the opinion of the Court is almost unanimously shared and undoubtedly does correctly state the intent and purposes of

Congress, it was not necessary for the jury to be so informed for its specific purpose. The devastating impact of illicit narcotic transactions on the health and welfare of the community should not have been highlighted by the court in a trial involving alleged violations of narcotics laws. That portion of the Court's charge was not objected to by defense counsel at trial but is cognizable on appeal under the "plain error" doctrine. *United States v. Coal*, 461 F.2d 521.

### CONCLUSION

For the reasons stated above, the decision of the trial court should be reversed.

Respectfully submitted,

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Aguilar V. M.S.

**AFFIDAVIT OF PERSONAL SERVICE**

**STATE OF NEW YORK,  
COUNTY OF RICHMOND ss.:**

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 23 day of July, 1977 at No. 111 Court Street, 4th Floor deponent served the within *brief* upon *M.S. Court Street* the *appellee* herein, by delivering a true copy thereof to *h* personally. Deponent knew the person so served to be the person mentioned and described in said papers as the *appellee* therein.

Sworn to before me,  
this 23 day of July 1977

*Edward Bailey*  
.....  
Edward Bailey

*William Bailey*  
.....  
WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, 1978